

PLANNING AND ZONING COMMISSION
STAFF REPORT

March 3, 2016



Rezoning RZ 16-03: Paul Marvin

CASE DESCRIPTION: a request to change the zoning classification from Residential District – 5000 (RD-5) to Retail District (C-2)

LOCATION: 0.921 acres of land located at 2306 Sandy Lane, between Turkey Creek Road and Stuart Street

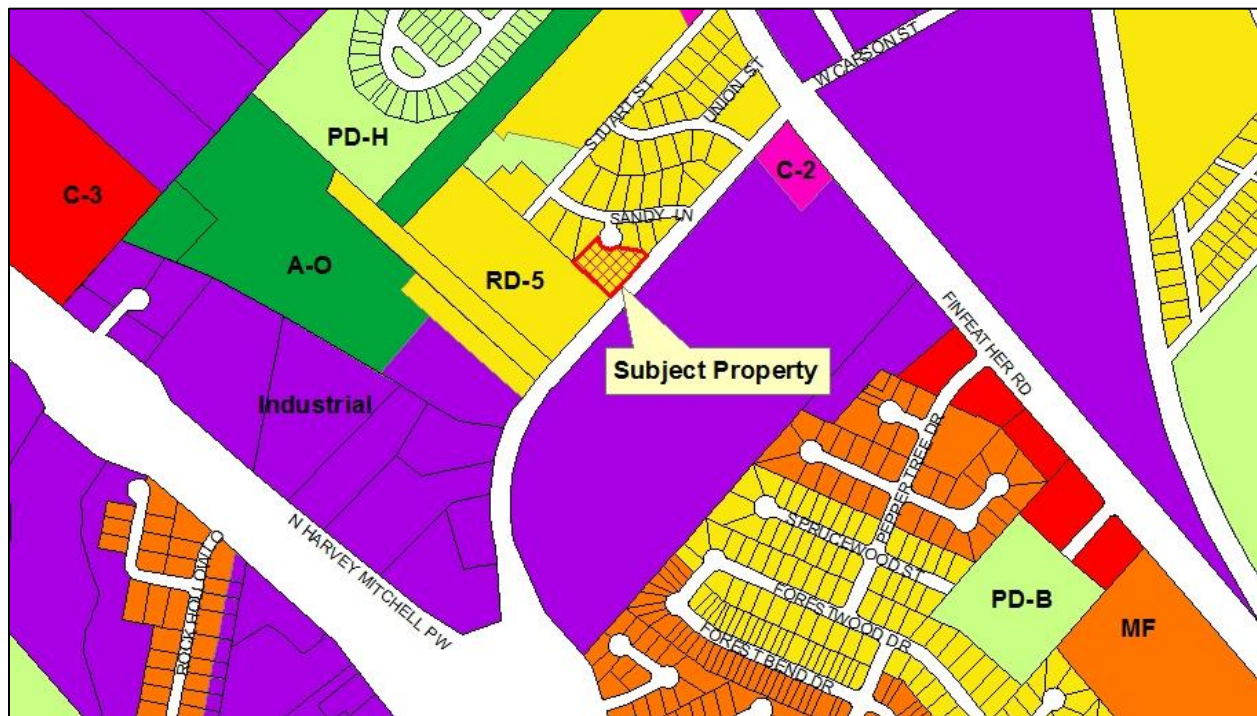
LEGAL DESCRIPTION: Lots 4, 5, and part of Lot 6 in Block 4 of Oak Glade Addition

EXISTING LAND USE: vacant (former Creath-Brazos Baptist Association Office)

APPLICANT(S): Paul Marvin

STAFF CONTACT: Randy Haynes, AICP, Senior Planner

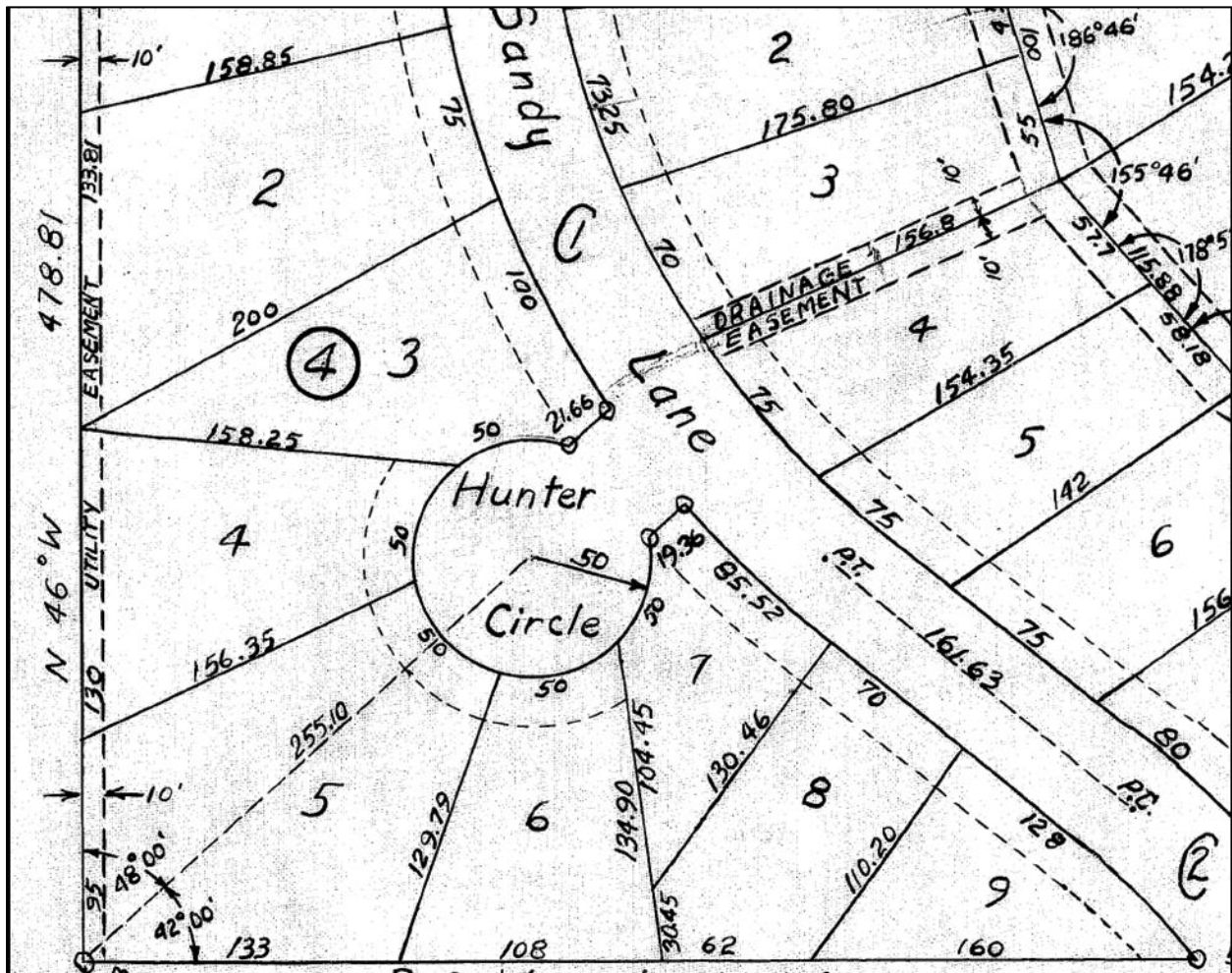
SUMMARY RECOMMENDATION: Staff recommends **denying** this request.



AERIAL PHOTOGRAPH, 2015:



DETAIL FROM FINAL PLAT, OAK GLADE ADDITION 1954:



CURRENT LOT ARRANGEMENT:



EXCERPT FROM REZONING APPLICATION:

Rezoning Supplement A



Minimum Requirements:

- ☐ Metes and Bounds description of property
- ☐ If Planned Development required, then include 15 folded copies and a .pdf of the development site plan

Please list the reasons for this rezoning request:

The property has been used in the past as a commercial property without any known
issues with the adjacent property owners. Also, a commercial business is currently located
adjacent to this property. Therefore, this property should be able to enjoy the same or
similar type use that is being allow on the adjacent property. The property immediately
across Turkey Creek Rd. is zone Industrial.

List the changed or changing conditions in the area or City which make this zone change necessary:

The adjacent property is currently being used as a commercial property. Due to the
changes in the nature of this area of town and the fact that this property has been used
as a commercial property and the adjacent property is being used as a commercial property,
this demonstrates that commercial zoning is warranted for this property.

Indicate whether or not this zone change is in accordance with the Future Land Use Plan. If it is not, explain why the Plan is incorrect:

The future land use plan (FLUP) does not show this property as C-2. The FLUP does
show commercial at the intersections of Finefeather and Turkey Creek Rd and FM 2818
and Turkey Creek Rd. With Turkey Creek Rd. being shown as a minor arterial, a
commercial use is a more practical use for this property rather than residential use.

List any other reasons to support this zone change:

The C-2 zoning would allow the property to be used as it has been in the past and will
be in the future as this area of the City continues to redevelop.

BACKGROUND:

Developer Herschel Burgess recorded the Final Plat of the Oak Glade Addition in July 1954, 5 months before the property was annexed into the City of Bryan and 2 months after the opening of the International Shoe Company factory, located across Turkey Creek Road from the new subdivision. The 40-lot addition filled up relatively quickly; today only 6 lots remain undeveloped.

The 3,000 square foot metal building on subject property was built in 1970 and, at the time Bryan enacted zoning regulations in 1989, was occupied by the offices of the Creath-Brazos Baptist Association. For the first several years after the property was initially zoned Residential District – 5000 (RD-5), the office use was considered legally nonconforming (grandfathered). Due to the fact that the property lay unused for a period of time greater than one year, the grandfathered (office) use was abandoned. Currently, the allowed uses on the subject property are only those permitted within the RD-5 zoning district. The RD-5 District is intended to provide for development of detached dwelling units on lots of not less than 5000 square feet.

The applicants now wish to change the zoning of the subject property from RD-5 District to Retail District (C-2). The Retail District is established to provide locations for various types of general retail trade, business and service uses. The district allows shopping areas or uses which are generally compatible near or adjacent to, but not usually directly in, residential neighborhoods.

In 2008, previous owners of the subject property requested that the zoning be changed from RD-5 District Office District (C-1) with Rezoning case no. RZ08-22. In that case, staff suggested that the Planning and Zoning Commission recommend that the City Council approve the request. Staff believes that C-1 zoning on at this particular location could provide a suitable transition between the arterial roadway (Turkey Creek Road), retail use in front of the existing manufactured housing community to the west, and the existing residential neighborhood to the north.

During 2 public hearings on the case, before the Planning and Zoning Commission and City Council, nearby property owners expressed concern that nonresidential use of the subject property would increase cut-through traffic via the unimproved cul-de-sac right-of-way of Hunter Circle. By a vote of 5 to 2, the Commission recommended approving the request during its meeting on December 4, 2008. During its meeting on January 13, City Council declined to consider the request until passage of an ordinance to abandon the right-of-way of Hunter Circle had been passed and approved. Excerpts from the meeting minutes of both meetings where that previous case was considered are attached to this staff report below.

RELATION TO BRYAN'S COMPREHENSIVE PLAN:

The City of Bryan's Comprehensive Plan includes policy recommendations related to the various physical development aspects of the community. Passages relevant to this case include:

Maintaining Neighborhoods – A reoccurring theme was the need to maintain and revitalize Bryan's neighborhoods. The proposed approaches to this need were varied. Some thought a property maintenance code was in order while others thought a program of incentives could be formulated to assist with reinvestment in targeted areas. All agreed that stable, attractive neighborhoods are vital to Bryan's future.

Citywide Land Use Policies

All land uses should be located such that:

- Appropriate buffers separate dissimilar uses. Buffers include, but may not be limited to transitional land uses, floodplain areas, parks, landscaping or natural and man-made features;

ANALYSIS:

In making its recommendation regarding a proposed zoning change, the Planning and Zoning Commission shall consider the following factors.

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned and their relationship to general area and the City as a whole.

The subject property consists of residential lots that face an unimproved cul-de-sac. The rear of the subject property lies adjacent to Turkey Creek Road. Property in the vicinity is substantially developed with an established residential neighborhood and a manufactured housing land lease community surrounding the subject tract on three sides. Southeast across Turkey Creek Road, the 43-acre International Shoe Company site is zoned for industrial use but has been largely vacant since the mid-1980s. Given the existing pattern of development and land use, staff believes that construction of new single-family homes is appropriate in this particular environment would represent the highest and best use of the subject property under current conditions.

The C-2 zoning classification is intended to allow shopping areas or uses which are generally compatible near or adjacent to, but not usually directly in, residential neighborhoods. Given the list of uses allowed by right in the C-2 District (51), staff believes that C-2 zoning of the subject property would create unfavorable impacts upon the existing residential uses that abut the subject property. A partial list of uses allowed by right in C-2 Districts includes;

- Automobile service station;
- Commercial amusement (indoor);
- Funeral home/mortuary;
- Gaming establishments;
- Indoor archery and shooting range;
- Motel or hotel;
- Package liquor store;
- Pawnshop;
- Restaurant;
- Retail services (including incidental uses);
- Tattoo/piercing studio;
- Veterinary services (no outdoor pens or runs).

Staff finds that the former non-residential use of the subject property, the existence of the 3,000 square-foot metal building on Lot 4 and the potential for marketing of the property is the primary reasons for the request for a zoning change. With regard to the Zoning Ordinance and nonconforming uses, it is the intent of the ordinance that nonconforming uses and structures should be allowed to continue until the use is abandoned (Zoning Ordinance Section 130-40(a)). In the case of the subject property, the former legally nonconforming office use of the property has long been abandoned. Further, Zoning Ordinance Section 130-40(a)(3) states that

“nonconforming uses are hereby declared to be incompatible with the permitted districts involved”.

Based on information obtained from the Brazos Central Appraisal District, the 31 residential properties within the Oak Glade neighborhood appear to be approximately 77% owner-occupied. Compared to the overall Bryan owner occupancy rate of 48%, owner occupancy in the Oak Glade is 60% higher. Given that owner occupancy typically reflects a measure of neighborhood stability, Oak Glade Addition may be considered exceptionally stable.

Staff also contends that the depth of the subject property does not provide adequate room for modern retail development while still providing a suitable transition space between a new retail use along the arterial roadway and abutting residential uses. Staff therefore maintains that C-2 zoning is not appropriate in this particular environment or consistent with the land use recommendations and policies articulated in Bryan’s Comprehensive Plan which recommends that neighborhoods be maintained and adequately buffered from dissimilar uses.

2. Whether there is availability of water, wastewater, storm water, and transportation facilities generally suitable and adequate for the proposed use.

The subject property has direct access to water and wastewater services. If the property were to access Turkey Creek Road, which is classified as a minor arterial street on Bryan’s Thoroughfare Plan, there is enough linear frontage to allow a conforming driveway to the subject property.

3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.

Staff believes that this zone change request, if approved, would not make land classified for similar development in the vicinity and elsewhere in the City unavailable for development.

4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

The rate that property is being developed and redeveloped within RD-5 Districts within close distances from area college campuses has been brisk. The subject property lies ½ mile from the new Blinn College West campus, 1½ miles from the Texas A&M University campus, and 2 miles from Blinn College’s existing campus. Retail development in the immediate area of the subject property has been somewhat slow. The abutting property formerly occupied by a neighborhood grocery currently houses a resale shop. Conversely, locations within ½ to 1 mile east and west have seen the recent development of a Wal-Mart grocery store and a Stripes convenience store.

5. How other areas designated for similar development will be, or are unlikely to be, affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.

If the request to change the zoning of the subject tract from RD-5 to C-2 were approved, other areas designated for similar development are unlikely to be affected.

6. Any other factors which will substantially affect the health, safety, morals, or general welfare.

Other than the potential negative impact caused by retail uses abutting an established residential neighborhood that have been previously discussed, staff has identified no other factors resulting from this requested zoning change that will affect health, safety or morals.

RECOMMENDATION:

Staff recommends **denying** C-2 zoning, as requested.

**EXCERPT FROM THE PLANNING AND ZONING COMMISSION'S
REGULAR MEETING MINUTE RECORD OF DECEMBER 4, 2008**

7. Rezoning RZ08-22: Kim and Leo Gonzales

R. Haynes

A request to change the zoning classification from Residential District – 5000 (RD-5) to Office District (C-1) on 0.91 acres of land adjoining the northwest side of Turkey Creek Road south from its intersection with Sandy Lane, being Lots 4, 5, and part of Lot 6 in Block 4 of Oak Glade Addition in Bryan, Brazos County, Texas.

Mr. Haynes presented a staff report (on file in the Development Services Department). Staff recommends approval of the request based on the following findings:

- Staff believes that C-1 zoning would provide a suitable transition between the arterial roadway, retail use in front of the exiting manufactured housing community and the existing residential neighborhood to the north and, therefore, is appropriate in this particular environment and consistent with the land use recommendations and policies articulated in Bryan's Comprehensive Plan,
- The subject property has direct access to water and wastewater services,
- This zone change request, if approved, will not make land classified for similar development in the vicinity and elsewhere in the City unavailable for development,
- The rate that property is being developed and offered for sale within office zoning districts is somewhat slow in this area,
- Several areas near the subject property are zoned residential but are in business use, and are unlikely to be affected by this zoning change, and
- Staff has identified no factors resulting from this requested zoning change that will affect health, safety, morals, or general welfare.

Responding to questions from Commissioner Parks, Mr. Haynes stated that Hunters Circle would have to be improved in order to provide access from Sandy Point Road, and that the intent in going through site review for the property would be to have all access to the property be off Turkey Creek Road.

Responding to a question from Commissioner Bond, Mr. Haynes stated that the building is currently leased to a daycare operation, but that there is no certificate of occupancy currently issued for the property.

Responding to a question from Commissioner Davila, Mr. Haynes stated that if the zoning remains unchanged, the buffering requirements will not apply, but if the zoning is changed the new office buffering requirements apply. He stated that the building is already sitting in a buffer zone, but when installing other structures or parking spaces the applicant will have to observe the buffer requirements.

Responding to Chairperson Clark, Mr. Haynes stated that discussion of the abandonment of Hunters Circle has taken place with the applicant, but that would require the approval of the owners of all three of the adjoining tracts. He stated that for this rezoning, staff does not want the office traffic taking access off of Sandy Point Road and that one reason approval is recommended is that this property faces an arterial street.

Commissioner Beckendorf asked if any of the ordinances had a separation requirement between the daycare and the convenience store that may sell alcohol. Mr. Haynes stated that there was not, that the separation requirements are between churches, hospitals and schools.

Mr. Zimmermann reiterated that the request is for office zoning, not daycare specifically.

Responding to questions from Commissioner Parks, Mr. Haynes stated that the proposal has to go through site review if the rezoning is approved, and that in this process parking, access, and landscaping will be improved. He also stated that there will be no variance request for the setback encroachment of the building because it is pre-existing.

Responding to a question from Commissioner Davila, Mr. Haynes stated that any use permitted in the C-1 zoning district could go in on the property.

The public hearing was opened.

Mr. James Herwald, 2314 Sandy Point Road, Bryan, came forward to speak against the request. He stated that in 1996 the City would not let his daughter move a mobile home onto 2312 Sandy Point Road because of the zoning of the lot. He stated that he is not opposed to the zoning being changed to C-1 if he could buy at least half of the lot so that it would not be right next to his property. He also stated that due to the nearby commercial development, there are cars parked along Sandy Point Road and Turkey Creek Road constantly. Mr. Herwald stated that he wants to know how much more traffic will be coming down Sandy Point Road if the zoning is changed.

Chairperson Clark informed Mr. Herwald that the Commission cannot legislate who may buy what property.

Mr. Herwald said he understood this, and then asked what type of building would be allowed there and how high it would be. Mr. Haynes stated the office zoning requires non-metallic siding with a 35 foot height limit.

Ms. Sharon Anderson, 2304 Cindy Lane, Bryan, came forward to speak against the request. She stated that this area was developed when there was no zoning in the city. She stated that she does not see how the City can enforce access from Turkey Creek Road, and that traffic is already a problem in the area and this would only add to the problem. She stated that there are bus stops in the area and that children play in the street, and that this use would increase the possibility of more vehicular conflicts with children. She stated that this use is not a good fit for the neighborhood.

Mr. Leo Gonzales, applicant, came forward to speak in favor of the request. He stated that the extra traffic on Sandy Point Road is a concern, and that he has proposed a one-way drive that enters and exits from Turkey Creek Road. He stated that the landscaping that is required will prevent people from driving in from Hunters Circle.

Mr. Zimmermann reminded the Commission that the issue at hand is the land use and zoning of the property.

Mr. Gonzales stated that this property predates most of the houses in the neighborhood, and that he knew it was residential zoning when he purchased the property.

Responding to questions from Commissioner Maxwell, Mr. Gonzales stated that he would not object to Hunters Circle being closed, but that it might block the access to 2312 Sandy Point Road.

Responding to a question from Chairperson Clark, Mr. Gonzales stated that he would not have a problem with the City divvying up the property from Hunters Circle among the property owners as long as he was not burdened with paving the area.

Responding to questions from Commissioner Maxwell, Mr. Gonzales stated that the property is currently in operation as a daycare for six children, but that the neighborhood has more traffic from the surrounding businesses than it does from the daycare

Responding to a question from Commissioner Davila, Mr. Haynes stated that were the zoning denied, the business owner could not use the facility as a Class C daycare but the grandfathered use of the property would not go away. He stated that this change is an opportunity to gain some buffer zones and clean up the area.

Responding to a question from Commissioner Parks, Mr. Haynes stated that the citizens can ask the city to vacate the public right-of-way on Hunters Circle with a \$50 application fee and a professional survey.

Mr. Gonzales stated that this area is zoned for office on the City's Comprehensive Plan and that this would be a great improvement for the area.

The public hearing was closed.

Commissioner Parks moved to recommend approval of Rezoning RZ 08-22 to the Bryan City Council and to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission. Commissioner Bond seconded the motion.

Commissioner Parks stated that the issue is for a rezoning and that the Commission spent an inordinate amount of time discussing the use. He stated that the future land use plan shows zoning other than residential, and that there are ways to vacate Hunters Circle.

Commissioner Bond stated that he concurred with Commissioner Parks, and asked if there can be a recommendation to close Hunters Circle and divide the property between the three land owners. Mr. Veness stated that the citizens could close the street with a petition.

Responding to a question from Chairperson Clark, Mr. Veness stated that the City can pay for a survey of the right-of-way, but not for one that included the lot(s).

Chairperson Clark stated that it is in everyone's best interest that Hunters Circle be closed.

Mr. Veness stated that the decision to close Hunters Circle would be given to the City Council through a long process.

The motion passed with a vote of five (5) in favor and two (2) opposed. Commissioners Beckendorf and Davila cast the votes in opposition.

**EXCERPT FROM THE CITY COUNCIL'S
REGULAR MEETING MINUTE RECORD OF JANUARY 13, 2009**

6. REZONING REQUEST (RZ 08-22)

a. Public Hearing – Rezoning Request (RZ 08-22)

Staff presented information regarding a request to amend Chapter 130, Zoning, of the City of Bryan Code of Ordinances, changing the zoning classification from Residential District-5000 (RD-5) to Office District (C-1) on 0.916 acres of land adjoining the northwest side of Turkey Creek Road south from its intersection with Sandy Lane, being Lots 4, 5, and part of Lot 6 in Block 4 of the Oak Glade Addition in Bryan, Brazos County, Texas. It was reported that the Planning and Zoning Commission approved the request. Council asked about the ability to place certain restrictions on the rezoning. The City Attorney advised the City had a separate process by which roads were closed, but it could not be done as part of the rezoning. Ms. Sharon Anderson, 2304 Cindy Lane, showed aerial photographs of the area and spoke about access via the existing cul de sac to various lots. She reported the applicant was obtaining access to the subject property via Sandy Lane rather than Turkey Creek Road. Mr. James Herwald, 2314 Sandy Lane, stated he was not against rezoning but concerned about traffic. He asked the Council to approve the rezoning only with the understanding that access to the property would be off Turkey Creek Road only. Mr. Joe Merka, 800 Union, and Mr. Bill Fabian, 2305 Oxford, agreed with the other speakers. No one else spoke on the subject and the public hearing closed at 6:46 p.m.

b. First Reading of an Ordinance – Rezoning Request (RZ 08-22)

Councilmember Southerland moved to postpone consideration of the rezoning request until such time as the staff brought forward an ordinance to close and abandon the subject cul de sac off Sandy Lane. The motion was seconded by Councilmember Hardeman and carried unanimously.